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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-252

LARRY MEACHUM, ET AL.,
Petitioner

v.

ARTHUR FANO, ET AL.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court is reported as follows: Fano v. Meachum, 387 F. Supp. 664 (D. Mass. 1975). The opinion of the Court of Appeals for the First Circuit is reported at 520 F. 2d 374 (1st Cir. 1975). Both opinions are included as an Appendix to the Brief of the Petitioners in support of their Petition for a Writ of Certiorari.

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the First Circuit properly concluded that an inmate was entitled to a hearing prior to a transfer from a medium security institution to a maximum security institution when correctional officials

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had deliberately differentiated state prison facilities to provide graduated conditions of confinement within the state and when these same officials had stipulated in the United States District Court that the conditions of confinement in the maximum security institution were more adverse than those at the medium security facility?

2. Whether the United States Court of Appeals for the First Circuit properly concluded that an inmate was entitled to a summary of information derived from informant sources prior to or at a hearing involving his transfer from a medium security institution to a maximum security institution when state prison officials had exercised their sound discretion in promulgating institutional regulations requiring the disclosure of such information?

3. Whether the opinion of the United States Court of Appeals for the First Circuit is consistent with opinions of this Court and of other lower federal courts?

STATEMENT OF THE CASE

The prior proceedings and statement of this case are reported in the opinion of the United States District Court, Fano v. Meachum, 387 F. Supp. 664 (D. Mass. 1975) and in the opinion of the United States Court of Appeals for the First Circuit, Fano v. Meachum, 520 F. 2d 374 (1st Cir. 1975).

ARGUMENT

INTRODUCTION

The United States Court of Appeals for the First Circuit did not address the broad constitutional questions suggested by the petitioners but instead reached rather narrow and carefully reasoned legal conclusions based on (1.) a specific record developed in the United States District Court through the parties' own stipulation of facts and (2.) the particular circumstances of the Massachusetts correctional system.

The petitioners misstate the issue initially by asserting that the fundamental question is whether a state prisoner has an interest, protected by the Due Process Clause of the Fourteenth Amendment, in remaining in any particular correctional institution. In fact, the limited issue raised by the record in this case is whether an inmate who is subject to an intrastate transfer has a right to a due process hearing when the transfer in question is, by the petitioners' own admission, to an institution with more adverse conditions of confinement and when the Massachusetts correctional officials have deliberately differentiated institutions within the state prison system to provide graduated conditions of confinement.

Furthermore, contrary to petitioners' assertion, there is no constitutional issue raised in this case regarding the necessity of disclosing the substance of informant information when that information is being used as a basis of a correctional official's decision to transfer an inmate (Brief for Petitioners at 15). Again the issue considered by the United States Court of Appeals is much narrower, for the Court only decided that, once prison

officials have exercised their sound discretion to promulgate regulations which provide some inmates with specific procedural protections, these officials cannot arbitrarily deny other inmates who are similarly situated these identical rights without a showing that the particular regulations are unworkable or unduly burdensome. These rulings are not only consistent with prior decisions of this Court and of the lower federal courts but also reflect an admirable respect by the Unites States Court of Appeals for the First Circuit for state correctional practices and procedures.

Consequently, the resolution of this case by the Court of Appeals was manifestly correct. There is no conflict of decisions with either this Court or other lower courts, and there is no important question of Federal law requiring decision by this Court.

I. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH PRIOR DECISIONS OF THIS COURT.

The petitioners contend that the Court of Appeals, in deciding whether the protections of the Due Process Clause should be applied to the transfers in the instant case, failed to analyze the nature of the interest at stake in line with prior decisions of this Court. To buttress this contention, petitioners selectively quote from the Court of Appeals decision and utterly ignore the court's careful analysis of the due process issue. In considering "whether the decision to transfer inmates from Norfolk to maximum security institutions within Massachusetts is of such a character that the due process rights of potential transferees are brought into play" (App. 31), the Court of Appeals quite properly looked to this Court's decision in Wolff v. McDonnell, 418 U.S. 539 (1974) for guidance. In Wolff, this Court rejected the argument that the interest of prisoners in disciplinary procedures is not included in the "liberty" protected by the Fourteenth Amendment. This Court further concluded that, at least where the State has created the right to good-time credits and provided for withdrawal of the credits as a sanction for disciplinary offenses,

> "the prisoners' interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty' to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." Wolff v. McDonnell, 418 U.S. at 557.

In the instant case, the District Court and the Court of Appeals specifically found, on the basis of the stipulation of facts entered into by the petitioners, and of the particular arrangement of institutions within the Massachusetts correctional system, that serious deprivations resulted from the transfers in question; that the Department of Correction had intentionally differentiated the state prisons to provide graduated conditions of confinement; and that the transfers constituted a sanction for specific charges of misconduct. 1/

1/

The petitioners have never denied either that the transfers resulted in serious deprivations to the inmates or that the transfers were a direct result of written disciplinary charges, for which hearings were not held. The prison officials apparently attempted to circumvent the procedural requirements set forth in Wolff by cancelling the disciplinary hearings and scheduling classification hearings in their place. Fano v. Meachum, 520 F. 2d 374, 376-377 (1st Cir. 1975). In any event, prison officials must not be permitted to abrogate their responsibilities under Wolff by labelling their decisions to produce a desired result and, thus, attempt to circumvent constitutional requirements.

After careful consideration of this Court's decision in Wolff v. McDonnell, supra, the Court of Appeals then articulated the precise nature of the inmates' interest:

> "In light of the disadvantages accompanying the transfers here at issue, the legal principles articulated in Wolff, Gomes and the transfer cases decided by other lower federal courts compel the conclusion that the due process clause is applicable. At issue is not a simple loss of privileges, for which a hearing may not be required, Wolff, 418 U.S. at 571-72 n. 19, but a significant modification of the overall conditions of confinement. We hold that the inmate interests affected fall within the 'liberty' protected by the Fourteenth Amendment." Fano v. Meachum, 520 F. 2d at 378.

The court went on to note that the Commonwealth was under no constitutional mandate to establish a graduated prison system and implied that if the state had not done so, the inmates' interest may not have fallen under the protection of the Fourteenth Amendment. Id at 379 at note 6. Thus the analysis and the language of the United States Court of Appeals is entirely consistent with this Court's line of analysis in Wolff. Compare Fano v. Meachum, 520 F. 2d 379 at note 6 with Wolff v. McDonnell, 418 U.S. at 557.

II. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH DECISIONS OF OTHER LOWER FEDERAL COURTS.

Petitioners contend that the lower federal courts are in conflict with each other and with the First Circuit in deciding whether procedural due process is required prior to transferring prisoners from one institution to another. This contention is simply erroneous. At least since the decision in Wolff v. McDonnell, supra, the lower courts have been unanimous in holding that a major adverse change in conditions of confinement, including an intrastate transfer of an inmate, gives rise to the protections of the Fourteenth Amendment "as a hedge against arbitrary determination of the factual predicate for imposition of the sanction." Wolff v. McDonnell, 418 U.S. at 571-72 at note 19. See e.g. Clutchette v. Procunier, 497 F. 2d 809 (9th Cir. 1974, on rehearing, 510 F. 2d 809 (1975), cert. granted, U.S. (June 9, 1975); Palmigiano v. Baxter, 487 F. 2d 1280 (1st Cir. 1973), vacated, 418 U.S. 908 (1974), after remand 510 F. 2d 534 (1974), cert. granted U.S. (June 9, 1975); McLaughlin v. Hall, 520 F. 2d 382 (1st Cir. 1975); Stone v. Egeler, 506 F. 2d 287 (6th Cir. 1974); Ault v. Holmes, 506 F. 2d 288 (6th Cir. 1974); Gomes v. Travisono, 490 F. 2d 1209 (1st Cir. 1973), vacated and remanded 418 U.S. 908, on reconsideration, 510 F. 2d 537 (1974); Carlo v. Gunter, ___ F. 2d ___, Civ. No. 75-1163 (1st Cir. August 4, 1975); United States v. Catalano, 383 F. Supp. 346 (D. Conn. 1974); Tai v. Thompson, 387 F. Supp. 912 (D. Hawaii 1975); United States ex rel. Myers v. Sielaff, 381 F. Supp. 840 (E.D. Pa. 1974); Robbins v. Kleindienst, 383 F. Supp. 239 (D.D.C. 1974); Clonce v. Richardson, 379 F. Supp. 338 (W.D. Mo. 1974); Daigle v. Hall, 387 F. Supp. 652 (D. Mass. 1975); Walker v. Hughes, 386 F. Supp. 32 (E.D. Mich. 1974); and Romero v. Schauer, 386 F. Supp. 851 (D.Col. 1974).[2/]

2/

It should be noted that the cases cited by petitioners(Brief at 11) in support of their contention were all decided prior to Wolff, at a time when some courts were still struggling with the question of the applicability of the due process clause to any prison proceeding. Even then, the majority of courts were in agreement as to the applicability of due process to prison disciplinary proceedings such as those conducted in the instant case. See, e.g., Schumate v. People of the State of New York, 373 F. Supp. 1166 (S.D.N.Y. 1974)(§1983 claim valid where the

Therefore, since Wolff v. McDonnell, the lower federal courts have been virtually uniform in requiring due process in a variety of prison proceedings, including intrastate transfers. The Court of Appeals decision is thus entirely consistent with decisions of other lower federal courts faced with similar issues.

2/ continued

character of confinement is substantially changed); Beatham v. Marson, 369 F. Supp. 783 (D. Conn. 1973)(due process would be applicable to intrastate transfer if inmate transferred for apparently disciplinary reasons); and Benfield v. Bounds, 363 F. Supp. 160 (E.D. N.C. 1973)(due process required prior to transfer from medium to close custody). See also, Sostre v. McGinnis, 442 F. 2d 178 (2nd Cir. 1971); Gray v. Creamer, 465 F. 2d 179 (3rd Cir. 1972); U.S. ex rel. Miller v. Twomey, 479 F. 2d 701 (7th Cir. 1973); King v. Higgins, 370 F. Supp. 1023 (D. Mass. 1974), aff'd 495 F. 2d 815 (1st Cir. 1974); Nolan v. Scafati, 430 F. 2d 548 (1st Cir. 1970); Kessler v. Cupp, 372 F. Supp. 76 (D. Ore. 1973); Bowers v. Smith, 353 F. Supp. 1339 (D. Vt. 1972); White v. Gillman, 360 F. Supp. 64 (S.D. Iowa 1973), and Landman v. Royster, 333 F. Supp. 621.

III. THE ISSUES IN THIS CASE ARE NARROW, ARE INEXTRICABLY BOUND TO CONSIDERATION OF MASSACHUSETTS REGULATIONS, AND DO NOT RAISE ANY IMPORTANT QUESTION OF FEDERAL LAW.

Petitioners' assertion that the instant case "concerns the extent of an informant's right to remain anonymous when his information is being used as a basis for administrative decisions in the prison system" (Brief of the Petitioners at 13) also reflects a total misunderstanding of the issues and of the Court of Appeals' decision. The Court of Appeals decision reflects its awareness that the instant case is "extremely narrow" in scope. Fano v. Meachum, 520 F. 2d. at 374. The Court again quite properly looked to Wolff v. McDonnell, supra, as guidance for the procedures required when a decision of prison officials imposes a substantial adverse change in the conditions of confinement because of a specific prior conduct. These procedures include (1) notice which gives the charged party a chance to marshall the facts in his defense and to clarify what the charges are in fact; (2) an opportunity to be heard; and (3) a written statement by the factfinders as to the evidence relied on and the reasons for the action. Id at 564-65. The court concluded that these procedures should govern the intrastate transfer of prisoners from a minimum security to a maximum security facility on the basis of allegations of specific prior misconduct, absent a demonstration of substantial institutional reasons in a particular case for failing to follow such procedures.[3/] Fano v. Meachum, 510 F. 2d at 379.

3/

Any other result would be paradoxical in that it would allow prison officials to circumvent Wolff by substituting a transfer for other disciplinary sanctions and would thus raise serious equal protection problems. Gomes v. Travisono, 510 F. 2d at 539.

The Court's balancing of the respective interests of the State and of the prisoners correctly began with the realization that the applicability of due process protections beyond those articulated in Wolff was a matter left "to the sound discretion of the officials at state prisons." Wolff v. McDonnell, 418 U.S. at 565. See also, Palmigiano v. Baxter, 487 F. 2d 1280, 1286 (1st Cir. 1973). The Court properly considered the disciplinary regulations promulgated by the Department of Correction to be reflective of the proper balance struck by petitioners in the Massachusetts prison system. These disciplinary regulations explicitly provide for the use of informant information at hearings and requires the Board Chairman to summarize such information for the accused inmate.[4/] Thus, the balance was struck between the equitable treatment of prisoners and the security needs of the prison, in the first instance, by Massachusetts prison officials themselves. The Court of Appeals merely recognized that once these procedures are established for some inmates, they cannot be arbitrarily denied other inmates without a demonstration that the procedures are unworkable or unduly burdensome. Fano v. Meachum, 520 F. 2d at 380. This narrow holding not only reflects proper respect for the discretion of state corrections officials but also, quite correctly, recognizes that their discretion is not absolute. See Wolff v. McDonnell, passim.

4/ The pertinent section of these regulations is set out in the opinion of the District Court (App. 21) and of the Court of Appeals (App. 35-36).

Finally, the issues presented by this case are quite different from those raised in United States ex rel. Haymes v. Montanye, 505 F. 2d 977 (2nd Cir. 1974), cert. granted, U.S. (June 30, 1975). In Haymes, the prisoner alleged that his transfer from one institution to another within the state was intended as punishment and, therefore, due process protection was required. The two institutions, however, were both maximum security prisons with very similar conditions. In the instant case, the petitioners agreed that the conditions at the maximum security institution were more adverse than those at the medium security institution. In addition, the court found that the Commonwealth had deliberately differentiated medium and maximum security institutions to provide graduated conditions of confinement based on an inmate's behavior and that a transfer from M.C.I. Norfolk to M.C.I. Walpole was specifically authorized by the Commonwealth as a sanction for misconduct.

Finally, the factual issues left unresolved in Haymes have been furnished in this case by a stipulated record which provides substantial support for the Court of Appeals' conclusions.

CONCLUSION

The instant decision is, therefore, a singular product of the Massachusetts prison system. There are no important questions of federal law which do not depend on the unique circumstances of this case. Consequently, this case is clearly not appropriate for the Court's exercise of its discretion to grant a petition for a writ of certiorari.

The decision of the United States Court of Appeals was based on two considerations unique to Massachusetts: (1) a state-created system of institutions with graduated conditions of confinement, and (2) specific regulations promulgated by the

Department of Correction. Clearly, such a decision has little significance outside of the Commonwealth and, therefore, should not be reviewed by this Court by certiorari.

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